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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 24

JACK GILBERT, et al.,

Petitioners,

v.

ALBERT B. CHANDLER, as *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENTS

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In the Supreme Court of the United States

OCTOBER TERM, 1953.

No. 25.

JACK CORBETT, *et al.*,

Petitioners,

vs.

ALBERT B. CHANDLER, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS.

A. OPINIONS BELOW.

The District Court did not file an opinion with its order dismissing the action. (R. 17-18.) By a per curiam order filed February 20, 1953 (R. 20; reported in 202 F. 2d 428), the Court of Appeals for the Sixth Circuit affirmed upon its opinion in *Kowalski v. Chandler, et al.*, which is reported in 202 F. 2d 413.

B. JUKISDICTION.

The petition for certiorari was filed on March 25, 1953, and this Court granted certiorari on May 25, 1953. (R. 21; 345 U. S. 963.) Petitioners have invoked the jurisdiction of this Court under Title 28, U. S. C. Sec. 1254 and 2101(c). (Petition 9.)

C. STATUTES INVOLVED.

The pertinent parts of Sections 1 and 2 of the Sherman Act (15 U. S. C. 1, 2) and Section 4 of the Clayton Act (15 U. S. C. 15) are set forth in the Petitioners' brief. (Pet. Br. 2-3.) Petitioners also set forth in their brief Sec-

tion 3 of the Sherman Act (15 U. S. C. 3) but that section is not applicable to, or in any way involved in, the claim which Petitioners purport to state.* If Petitioners' construction of Sections 1 and 2 of the Sherman Act were adopted, then Section 6 of the Clayton Act (15 U. S. C. 17), Section 20 of the Clayton Act (29 U. S. C. 52), and Section 13(a) and (c) of the Norris-LaGuardia Act (29 U. S. C. 113(a), (c)) would be involved.**

Although they are nowhere referred to in the Amended Complaint, Petitioners in their brief also set forth under the heading "Statutes Involved" the Fourteenth Amendment of the Constitution, and Articles 55 and 56, Chapter IX of the United Nations Charter, each of which is patently inapplicable to Petitioners' purported claim. There is manifestly no question of State action involved herein, and the quoted Articles of the United Nations Charter merely set forth a principle, and on their face require Congressional legislation before they can be effective or applied internally in this country.

D. STATEMENT OF THE CASE.

The case stated in the Amended Complaint (hereinafter called the Complaint) is very different from the case asserted and argued in the Petitioners' brief. Petitioners' brief contains numerous assertions of alleged facts for which no support in the record is cited, claimed or exists. It also contains numerous assertions of alleged facts which

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* The Amended Complaint does not allege, but affirmatively negatives, that any of the acts or transactions upon which Petitioners base their claim were performed or occurred either in the District of Columbia or in a Territory; and the allegations of the Amended Complaint establish that in any event Petitioners could not have been damaged by any alleged restraint of local activities in the District or in any of the Territories.

** These statutes are set forth in the Appendix to this brief.

purport to be, but are not, supported by record citations given or by any allegation in the Complaint. This practice is not excused by the fact that such assertions are in large part irrelevant to Petitioners' claim.

Indeed, Petitioners so gravely fail adequately and fairly to state the case which is presented for review and was decided by the courts below, as to justify a dismissal of the Petition upon that ground alone. *Furness, Withy & Co. v. Yange-Tsze Ins. Ass'n.*, 242 U. S. 430, 433-4; *Erie Railroad Company v. Kirkendall*, 266 U. S. 185; *Sutter v. Midland Valley R. Co.*, 280 U. S. 521.

The variance between the case pleaded and the case stated and argued in the brief is so great that a separate statement of the two is necessary in order to present to this Court the case which was passed upon by the courts below and in order to show that the greater portion of Petitioners' argument is unsupported by and irrelevant to the case they actually pleaded.

1. The Claim Which the Complaint Purports to State.

Petitioners are El Paso Baseball Club, Inc. (a corporation hereinafter called the El Paso Club) and Jack Corbett whose joinder as a party is supported solely by an allegation that he allegedly "organized" the corporate petitioner. (R. 2, pars. I, II; R. 11, par. LXI, cf. Pet. Br. 4.) Respondents are Albert B. Chandler, individually and as Commissioner of Baseball, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues, Cincinnati Baseball Club Company (hereinafter called the "Cincinnati Club") Powell Crosley, Jr., individually and as President and owner of the Cincinnati Club, and Warren Giles, individually and as General Manager of the Cincinnati Club. The Com-

plaint purports to state a statutory claim for recovery of treble the damages allegedly caused to Petitioners by Respondents' alleged violation of Sections 1 and 2 of the Sherman Act.

As hereinafter appears, it is not alleged that either of Petitioners (1) is, or ever has been, engaged in the broadcasting or telecasting business or (2) is, or ever has been, engaged in giving professional baseball exhibitions in the Major Leagues or in any of the Minor Leagues except a Class C League. Consequently, Petitioners' allegations with respect to the Major Leagues and the higher classifications of Minor Leagues, including their sales of broadcasting and telecasting rights and ownership of "farm clubs," are surplusage and serve only to obscure and confuse the statement of Petitioners' alleged claim. Those allegations, which are unrelated to Petitioners' alleged claim, comprise (both in number and bulk) the greater part of the Complaint. (R. 3-5, pars. VIII-XXIII; R. 5-7, pars. XXVII, XXVIII, XXX-XLIV; R. 8-9; pars. XLVI-L; R. 10-11, LIV-LVII; R. 13-4, par. LXXI.)*

The gist of Petitioners' alleged claim is that by an agreement, to which Respondents were allegedly parties, the Petitioners have been restrained from inducing four baseball players to breach their player contracts with Mexican Clubs and from playing them under contracts with the El Paso Club, and that Petitioners have thereby been prevented "from disposing of them (i.e. assigning their contracts with the El Paso Club) for a considerable profit." (R. 11, par. LVIII; R. 11-12, pars. LXII-LXV; R. 13, par. LXVIII; Pet. Br. 8.)

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* Respondents moved, in the alternative, to strike Petitioners' irrelevant allegations. (R. 16-7.) However, the District Court, having concluded to dismiss the Complaint, did not rule upon this alternative motion.

The Complaint is voluminous and contains so many irrelevant allegations that, for clarity, we shall summarize, first, the alleged background facts which relate to the claim and, second, the alleged facts which constitute the claim.

(a) The alleged background facts which relate to the alleged claim. "Organized Baseball," as that term is used in the Complaint, includes the two Major Leagues and the Minor Leagues which are members of a voluntary association known as the National Association of Professional Baseball Leagues (hereinafter called the "National Association"). All Major and Minor Leagues are voluntary associations. There are 50 Minor Leagues, classified and designated, in accordance with their respective standards of play, as AAA, AA, A, B, C and D Leagues. The Minor Leagues of "Organized Baseball" operate under the National Association Agreement, the Major-Minor League Agreement and the Major-Minor League Rules. (R. 3, par. XII; R. 5, pars. XXIV, XXV, XXVI.) Minor League clubs in the AAA and AA Leagues sell rights to broadcast and telecast descriptions of their games. (R. 6, par. XXX.) As hereinafter appears, Petitioners claim to have been damaged solely as operators of a baseball club in a Class C League.

The "player regulations." The Minor Leagues and their member clubs entered into an agreement with respect to certain of the terms upon which they would employ players. This alleged agreement provided that all Minor League clubs shall use a standard form of player contract and that this contract shall contain covenants which make the contract assignable and grant to the employing club or its assignee an option to renew the contract for another season. (R. 6, par. XXIX; R. 9, par. LI; R. 10, par. LIV; R. 13, par. LXX.) The covenant for renewal

is interchangeably described as a "reserve clause" or a "right of reservation" (e.g., R. 6-7, pars. XXXI, XXXIII, XXXV; R. 9, 10, pars. LI, LII, LVI; R. 11, par. LVIII; R. 13-14, pars. LXX, LXXI.) For brevity, the foregoing provisions with respect to the employment of players are collectively designated as "the player regulations."

In 1946 and 1947 one or more Major League players were threatened with "blacklisting" or were "blacklisted" (i.e., placed on an ineligible list) for breaching their player contracts. (R. 8-9, par. L.) This was done pursuant to an allegedly "illegal construction" of the right of reservation by Respondent Chandler. (R. 8, 9; pars. L, LI.) There is no allegation in the Complaint that Petitioners, or any of the El Paso Club's Minor League players or any other Minor League players were blacklisted.

The alleged "Mexican League Agreement." Sometime after February 9, 1949, Respondent Chandler (presumably, although not alleged to have been, acting as Commissioner of Baseball) entered into an agreement with the Mexican League under which the clubs of the Minor Leagues would respect the "right of reservation" (i.e., the option to renew for another season) in the player contracts of the Mexican League and the clubs in the Mexican League would respect the "right of reservation" in the player contracts of the clubs of the Minor Leagues. The Respondent Trautman "abided by" the agreement. Notice of this alleged agreement was not, it is alleged, given to "the owners of Minor League Clubs" until March 19, 1949. (R. 11, pars. LVIII, LIX; R. 11-12, par. LXII.) For brevity, the foregoing alleged agreement is hereinafter sometimes designated as the "Mexican League Agreement."

(b) The alleged events which constitute Petitioners' claim. Sometime between the close of the 1948 baseball season and the opening of the 1949 baseball season, Petitioner El Paso Club was organized and became a member of the Class C Arizona-Texas League. (R. 11, par. LXI.)

At some unspecified date or dates, the El Paso Club entered into player contracts for the 1949 season with four players of Mexican nationality, each of whom had played during the 1948 season for clubs in the Mexican League under player contracts which contained "the right of reservation" or option to renew, and had "endeavored to sign" another Mexican player. (R. 12, par. LXIII.) The Mexican League Agreement had not been "officially promulgated" when Petitioner, El Paso Club, was "organized" and became a member of the Class C Arizona-Texas League. (R. 11, par. LXI.)

After a formal hearing, Respondent Trautman, acting as President of the National Association, ruled that the El Paso Club, in contracting with the foregoing players, had induced them severally to breach their respective contracts with the Mexican Clubs. Upon an appeal by the El Paso Club, this ruling was upheld by the Executive Committee of the National Association. (R. 12, pars. LXIV, LXV.)

As the result of the enforcement of the Mexican League Agreement, the El Paso Club "lost the services of four Mexican Players," was "deprived of the opportunity" to induce other Mexican players to contract with the El Paso Club in breach of their contracts with Mexican Clubs and was "prevented from disposing of them (i.e., the Mexican players) for a considerable profit." (R. 13, par. LXVIII.) As a further result the Petitioners have allegedly been deprived "of their rights in Organized Baseball in

the United States and its Territories" to their damage in the amount of $100,000; and Petitioners seek to recover treble such alleged damages in a statutory action under the anti-trust laws. (R. 14, Prayer.)

2. The Case Which Petitioners' Brief Purports to State.

The case stated in Petitioners' Brief contains many allegations and embellishments not contained in or fairly inferable from the Complaint. Petitioners, apparently realizing that their Complaint as drawn does not state a statutory claim under Section 4 of the Clayton Act, seek here to bolster their case by assertions in their Brief of alleged "facts" which are not in their Complaint and were not presented to the Courts below. For example, the Petitioners belatedly attempt in their Brief to amend their Complaint by asserting that the effect of the Mexican League Agreement was to deprive them of opportunities to sell in Mexico broadcasting and telecasting rights to games of the El Paso Club. No inkling of this highly speculative source of damage was contained in the Complaint.

The following assertions of alleged facts in the Petitioners' Brief (a) are either not supported by any record citation or are not supported by Petitioners' record citations and (b) are not supported by any allegation in the Complaint, to wit:

(1) Major League Clubs themselves "broadcast and telecast" their games and thereby derive "great revenue * * * from advertisers or sponsors of products." (Pet. Br. 5; Pet. 3.) [The Complaint alleges only that Major League Clubs sell to others rights to broadcast and telecast descriptions of their games (R. 4-5, pars. XIX, XXI, XXII).]

(2) Certain Minor Leagues "broadcast and telecast their games," play "a Little World Series" and derive large

revenues from broadcasting and telecasting the latter games. (Pet. Br. 5; Pet. 3.) [The only pertinent allegation is that "Minor League Clubs in the AAA and AA Leagues" sell rights to broadcast and telecast descriptions of their games (R. 6, par. XXX).]

(3) Defendants have conspired to monopolize professional baseball in Mexico. (Pet. Br. 6; Pet. 3.)

(4) "Organized Baseball" maintains a monopoly "over radio and television for profit in interstate and foreign commerce." (Pet. Br. 6; Pet. 4.)

(5) The player contracts give the employing club "irrevocable title or right to the player's services whether the player renews his contract or not" which "title and right" is protected or enforced by a "blacklist" and an agreement with a Mexican League. (Pet. Br. 6; Pet. 4.)

(6) The covenant for assignability in player contracts "permits" Major League Clubs to own Minor League Clubs. (Pet. Br. 6; Pet. 4.)

(7) The foregoing alleged contractual rights of employing clubs is enforced against other clubs by a "threat of blacklisting," by blacklisting and barring from the game a player, who contracts with a "blacklisted" club, and by subjecting "to blacklist and permanent expulsion" a club owner, who permits his team to play against a "blacklisted" club. (Pet. Br. 6-7; Pet. 4.) [The Complaint refers only to an alleged blacklist of some Major League players in 1946 (R. 10 11, par. LVII).]

(8) Petitioners were blacklisted, fined and punished. (Pet. Br. 20.) [There is no allegation in the Complaint that Petitioners were ever blacklisted. Par. LXVI refers only to a fine levied and remitted in connection with a matter not involved in this case (R. 12).]

(9) "It is fairly inferable" (seemingly from a bare allegation that the El Paso Club had signed four Mexican players) that appearance of the Mexican players in the El Paso Club's games would have created interest among the Mexican population in Texas and in Mexico, that it is further "fairly inferable" that this would have increased "the value of Petitioners' franchise" and would have had the "probable result" of creating an opportunity to sell rights to broadcast and telecast "petitioners' games into Mexico" with "economic gain" to Petitioners. (Pet. Br. 7; Pet. 5.) [Nothing in the Complaint alleges or permits an inference that Petitioners had any expectation or interest whatsoever in selling rights to broadcast or telecast descriptions of the El Paso Club's games.]

(10) The Commissioner "secretly" made an agreement with the Mexican National League. (Pet. Br. 7; Pet. 5.) [The Complaint alleges that the agreement was made after February 9, 1949 and published March 19, 1949. (R. 10, 11; pars. LVII, LVIII.) Yet Petitioners' Brief repeatedly refers to a "secret" agreement. (Pet. Br. 7, 8, 20.)]

(11) The Mexican League Agreement was unknown to Petitioners "when they signed four players from" Mexican Clubs. (Pet. Br. 7-8; Pet. 5-6.) [On this point Petitioners' Brief 8 refers to R. 11, 12. Nothing there alleges the Petitioners did not know of the Mexican League Agreement when they signed the four players. The date of signing the players is significantly lacking. The Complaint only alleges that the agreement was not promulgated before Petitioner Corbett organized the El Paso Club. (R. 11, par. LXI.)]

(12) The authority of Chandler to make, and of Trautman to enforce, such agreement "was established by proceedings within Organized Baseball." (Pet. Br. 8; Pet. 6.)

(13) Defendants "fully ratified the agreement of Commissioner Chandler." (Pet. Br. 8; Pet. 6.)

(14) A Mexican administrative board allegedly made an administrative ruling which is denominated a decree of "the Mexican Courts." (Pet. Br. 8; Pet. 6-7.)

(15) The defendants have combined and conspired to monopolize professional baseball in the United States and Mexico "thereby depriving petitioners of their right to employ players of Mexican nationality." (Pet. Br. 6.) Other statements and innuendo in the Brief are intended to convey the impression that the Respondents and Organized Baseball have endeavored to prevent players of Mexican nationality from playing in the United States. (Pet. Br. 20, 21.) [The Complaint shows affirmatively that Mexican nationals were playing and were permitted to play in the Minor Leagues. (R. 11, par. LX.) Petitioners' own description of the Mexican League Agreement alleges that it was concerned with players *under contract* to the Mexican League, not with their nationality (R. 11, par. LVIII). The Complaint further alleges that the Petitioner El Paso Club signed a Mexican player. (R. 13, par. LXVII.)]

Petitioners' argument is based not only upon the foregoing asserted facts which are not found in their Complaint, but also upon alleged facts, conclusions and opinions stated in numerous private publications, and in a Report of a Subcommittee of a Committee of the House of Representatives. In so far as the facts and conclusions of fact allegedly stated in the Report of the Subcommittee or in private publications are not alleged in Petitioners' Complaint they cannot be considered in reviewing the judgments of the lower courts (1) because they are not alleged in the Complaint upon which the decisions of the lower courts were based; (2) because neither the Report

nor the private publications would be admissible in evidence as proof of any facts or conclusions stated therein; (*United States v. International Harvester Co.*, 274 U. S. 693, 703; *Mutual etc. Insurance v. Tisdale*, 91 U. S. 238, 244-5; *Lomax Transportation Co. v. U. S.* (C. C. A. 9), 183 F. (2d) 331, 334) and (3) because, if any such facts or conclusions of fact were claimed to be within the realm of judicial notice, such a claim could not be founded upon or supported by reference to the Subcommittee Report or to the private publications.

Petitioners' argument and Brief wholly disregard the fundamental principles that a motion to dismiss is addressed to, and must be determined upon, the well pleaded allegations of the complaint; and that reasons based on facts not appearing in the complaint, and evidence which the parties hope to be able to introduce at the trial, cannot be considered. *Polk Co. v. Glover*, 305 U. S. 5, 9; *Emmons v. Smitt* (C. C. A. 6), 149 F. (2d) 869 (cert. den. 326 U. S. 746); *Rozelle v. Quinn*, 47 F. Supp. 740; *Bagby v. Cleveland Wrecking Co.*, 28 F. Supp. 271.

3. Judgments of the Courts Below.

In the District Court Respondents moved for an order dismissing the action upon the separate and independent grounds (1) that the District Court lacks jurisdiction over the subject matter of the action and (2) that the Complaint fails to state a claim upon which relief can be granted. (R. 15, 17.) The District Court dismissed the action upon both grounds of Respondents' motions; and the Court of Appeals affirmed the order of the District Court. (Pet. 9; R. 17-18, 20.)

It should be noted that even if the District Court had jurisdiction over the subject matter of the action and the Complaint had otherwise stated a claim upon which relief

could be granted, the reasonableness of either the player regulations or of the Mexican League Agreement could not have been judged upon a motion addressed to the Complaint but only upon evidence with respect to their history, purpose and result. *Chicago Board of Trade v. United States*, 246 U. S. 231, 238. Consequently, the question of the reasonableness of either the player regulations or the Mexican League Agreement was not presented and was not in issue in either court below and is not in issue before this Court.

E. THE QUESTIONS PRESENTED.

Petitioners' private statutory claim is that they were proximately damaged as operators of a Class C Minor League Club by the enforcement of the Mexican League Agreement under which the clubs of the Mexican League and the clubs of the Minor Leagues reciprocally agreed not to induce each other's players to breach their player contracts and sign player contracts with another club while still bound by an unexpired contract or option to renew such contract. If the Petitioners have been damaged in any way, it necessarily was as operators of the Class C El Paso Minor League Club. The ultimate questions presented are:

First: Did the District Court have jurisdiction over the subject matter of the private statutory claim which Petitioners assert?

Second: Assuming jurisdiction over the subject matter, was the judgment dismissing the action nevertheless correct because the Complaint fails to state a claim upon which relief can be granted?

The determination of these ultimate questions presents the following specific questions:

(1) Is the giving of Minor League professional baseball exhibitions interstate trade or commerce within the meaning of the Sherman Act?

(2) Does the Mexican League Agreement, by which alone Petitioners were allegedly damaged, substantially restrain some line of interstate or foreign commerce?

(3) Can Petitioners maintain an action under Section 4 of the Clayton Act (15 U. S. C. 15) for deprivation "of their rights in Organized Baseball"?

(4) Does the Complaint fail to allege facts which, if proved, would establish that the Mexican League Agreement has caused a substantial injury, or any injury, to the public?

(5) Does the Complaint fail to allege facts which, if proved, would support a legal or logical inference that either of Petitioners has sustained recoverable damages?

(6) Is the subject matter of Petitioners' alleged claim specifically exempted from the anti-trust laws by provisions of the Clayton and Norris-LaGuardia Acts?

Respondents are unable to find any statement of the questions presented in Petitioners' Brief unless the argument set forth under the heading "Question narrowed by decision below" be assumed to constitute such a statement. Under that heading, Petitioners state that (a) the real issues are "the amount of people and money involved" in the broadcasting and telecasting of baseball games (Pet. Br. 11); and (b) "This Court has for determination the defense of absolute immunity by Organized Baseball" (Pet. Br. 10, 11).

Reference to such quantitative tests, applied to broadcasting and telecasting activities not alleged to have injured the Petitioners, would not be a statement of the

questions presented even if it were accurate and were relevant to Petitioners' claim, but is instead, a statement of an argument upon some unstated question.

The theme that Respondents are asking for "absolute immunity" from the Anti-Trust Laws and that an affirmance of the decision below would give such "immunity" runs throughout Petitioners' Brief. (Pet. Br. 10, 15, 16, 17, 18, 25, 29, 30.) They go so far as to say (without any Record support and contrary to the fact) that "Respondents went to Congress for immunity legislation, which was denied" (Pet. Br. 16). Respondents do not contend that they have any "immunity" (absolute or otherwise) from the Sherman Act or other anti-trust laws, or from Federal regulation. Instead, Respondents contend only that their activities, which are involved in this case, do not fall within the scope of the Sherman Act; and no misuse of words or assumptions by Petitioners can convert Respondents' position into anything else.

"Immunity," in the sense used by Petitioners, is an exemption from some general duty or burden imposed upon citizens generally. When and if any activity of citizens (whether or not engaged in professional baseball) restrains interstate commerce unreasonably, the Sherman Act unquestionably applies and may be invoked by the proper party. However, the Sherman Act does not apply to intrastate activities (whether or not commerce) by whomsoever carried on, which do not restrain interstate commerce; and to contend that such activities are not within the scope of the Sherman Act is no more a plea for "immunity" than to point out that a plaintiff has failed to state a claim or has misconceived his remedy in any other action. Of course, Respondents do not contend that a decision of this Court affirming the judgments below ..ould

grant the Respondents or others engaged in professional baseball "absolute immunity" from the Sherman Act.

We have here a private treble damage action under Section 4 of the Clayton Act, under which Petitioners, to prevail, must establish that they have been injured in their business or property by activities of the Respondents which violate the Sherman Act. This presents only the specific questions listed above, and not an issue of "absolute immunity."

ARGUMENT.

I.

NONE OF THE ALLEGED RESTRAINTS, BY WHICH PETITIONERS WERE ALLEGEDLY DAMAGED, RELATE TO INTERSTATE ACTIVITIES OR TO "TRADE OR COMMERCE" WITHIN THE MEANING OF THE SHERMAN ACT.

To a large extent the legal principles and authorities, which are determinative of the questions presented in this case, are the same principles and authorities which are determinative of like or similar questions presented in the companion case pending in this Court, entitled *Kowalski v. Chandler*, No. 23, October Term, 1953, in which the petitioner and respondents are respectively represented by the same counsel. Where that situation exists, Respondents, to avoid burdening this Court with necessarily repetitive arguments, refer to respondents' brief in the *Kowalski* case for a fuller statement of applicable principles and authorities and confine their discussion in this brief to the application of such principles and authorities to the instant case.*

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* For brevity, *Kowalski v. Chandler*, No. 23, October term 1953 will hereinafter be designated as the "Kowalski case" and the cross references to respondents' brief therein will be designated "Res. Kowalski Br. ----------."

A. In Federal Baseball Club v. National League, 259 U. S. 200, This Court Unanimously Held (1) That the Giving of Professional Baseball Exhibitions is Not (a) An Interstate Activity and Is Not (b) "Trade or Commerce" within the Meaning of the Sherman Act and (2) That the Player Regulations Do Not Affect Any Interstate Activities or Commerce.

For a statement of the scope and grounds of, and the principles underlying, the decision of this Court in *Federal Baseball Club v. National League*, 259 U. S. 200 (hereinafter called the *Federal Club* case) Respondents refer to the respondents' brief in the *Kowalski* case. (Res. Kowalski Br. 15-20.)

The player regulations, which were involved in the *Federal Club* case, provided: (1) that all Major League player contracts should be uniform and all Minor League player contracts should be uniform, each of which should be assignable, should contain a "reserve clause" or option in the employing club or its assignee to renew for the next season and should contain a covenant not to play for any club other than the employing club or its assignee (269 Fed. 683, 687; Record 87-9, 91-92, 96, 103, 108, 110, 112-113, 140-3);* (2) that no club should negotiate with or employ a player under contract with, or on the reserve list of, another club without the latter club's express consent (269 Fed. 683; Record 87, 141); (3) that a player who violated his "reserve clause" or contract should be disciplined by being placed on the ineligible list which should be kept by the Leagues and circulated among their member clubs (269 Fed. 687; Record 90-91, 99, 142); (4) that a

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* Citations to "269 Fed. _____" refer to facts stated in the opinion of the Court of Appeals in the *Federal Club* case. Citations to the record printed in this Court in the *Federal Club* case are designated "Record _____" to distinguish them from citations to the printed record in the case at bar, i.e. "R. _____."

player on the ineligible list could not play for or be employed by a club in the Major or Minor Leagues or be released from his contract unless and until he should have applied for, and should have obtained, reinstatement (269 Fed. 687; Record 21, 98-99); and (5) that any club, which negotiated with or employed a player under contract or reservation to another club without the latter club's express consent, permitted its park to be used for games in which ineligible players participated, employed an ineligible player or permitted its team to play against an ineligible player, should be subject to discipline by fine or, in an aggravated case, by expulsion from professional baseball (269 Fed. 687; Record 87, 143-4).

As hereinafter shown, the foregoing alleged restraints upon both clubs and players in connection with player employment, included every restraint involved in the player regulations and in the Mexican League Agreement alleged in the case at bar.

B. The Federal Club Case Is Not Distinguishable Upon the Facts From the Case at Bar.

The plaintiff in the *Federal Club* case, and the other clubs of the old Federal League, had been attempting to give professional baseball exhibitions of Major League caliber in competition with clubs of the two Major Leagues. Consequently all of the activities of the Major League clubs, if having actual or potential legal significance, were relevant. However, neither of the instant Petitioners has been giving professional baseball exhibitions in competition with the Major League clubs; and what is done by those clubs, is irrelevant to Petitioners' claim. Nor have Petitioners been giving professional baseball exhibitions in competition with Minor League clubs in classifications above Class C. Consequently the scope of Petitioners'

claim, and of activities relevant to that claim, is narrower than was the case with respect to the claim of the plaintiff in the *Federal Club* case.

As hereinafter shown, each of the grounds upon which Petitioners contend that the *Federal Club* case is distinguishable upon the facts from the case at bar, is irrelevant to Petitioners' claim or is without factual basis in the allegations of the Complaint or is without legal significance.

1. The fact, that purchasers of rights from some clubs now also utilize radio and television as well as telegraphy for transmitting descriptions of some baseball games, does not distinguish the Federal Club case from the case at bar.

As we understand Petitioners' brief, Petitioners contend that the *Federal Club* case is factually distinguishable from the instant case solely upon the ground that some clubs now sell rights to transmit, interstate, descriptions of their games by radio and television as well as by telegraph. (Pet. Br. 10-11.) As hereinafter shown, this alleged factual distinction is wholy irrelevant to Petitioners' claim and, were that not so, would be without legal significance.

First: The Complaint does not allege that the Petitioner El Paso Club, any other member club of the Class C Arizona-Texas league or any member club of any Class A, B, C or D League, ever sold rights to broadcast or telecast descriptions of any games. Instead, the Complaint only alleges that clubs in the Major Leagues and in the AAA and AA Minor Leagues sell such rights. (R. 4, par. XIX; R. 6, par. XXX.) The Complaint does not allege that the sale of such rights by any of the foregoing clubs in any way damaged or affected Petitioners.

Nevertheless Petitioners boldly assert that, when Petitioners signed the Mexican players, they were "faced with

loss of patronage" by reason of the broadcast and telecast of descriptions of Major League games* (Pet. Br. 19); and that as a result of being unable to employ the Mexican players, Petitioners were deprived of potential opportunities to sell rights to broadcast and telecast descriptions of their games in Mexico. (Pet. Br. 20, 21.) These assertions are not only wholly unsupported by any allegations in the Complaint but are plainly conjured out of thin air in an attempt to avoid the fact that the sale of rights to broadcast and telecast descriptions of games by clubs in the Major, AAA and AA Leagues are wholly irrelevant to Petitioners' claim. If these unsupported assertions had any basis in fact it is inconceivable that they would not have been alleged in the Complaint.

Petitioners' Complaint affirmatively shows that the Juarez Club, which played in the same League and in a Mexican city directly across the river from El Paso, was subject to the same player regulations and, had any market existed, could have sold rights to broadcast and telecast descriptions of games in which numerous Mexican players participated. As stated above the Complaint does not allege that any Class C club ever sold any rights to broadcast or telecast descriptions of its games. As disclosed by the records of the Federal Communications Commission and as

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*Having ventured to make this unsupported assertion, it is curious that Petitioners should also admonish this Court that to reaffirm the *Federal Club* case might result in the Major League Clubs readopting former Major League Rule 1(d) which protected Minor League clubs against the sale of rights to broadcast or telecast descriptions of Major League games in the territory of a Minor League club without that club's consent and was in effect throughout the period covered by Petitioners' complaint. (Pet. Br. 31, f.n. 1.) Of course, affirmance of the judgment below upon the authority of the *Federal Club* case would not determine the validity of rules which the Major League clubs might adopt with respect to broadcasting and telecasting, a subject which is not involved in the case at bar.

well known to Petitioners, there was not, at any time covered by the Complaint and is not even now, any television station in El Paso.

Second: Were the sale of radio and television rights by Major League, AAA and AA Clubs in any way related to Petitioners' claims, the sale of such rights would not change the giving of professional baseball exhibitions from an inherently local activity into an interstate activity or from a sport into "trade or commerce." (Res. Kowalski Br. 21-4.) Also, the baseball clubs which sell rights to broadcast and telecast descriptions of their games do not themselves engage in the interstate communication. *Fisher's Blend Station v. Tax Commission*, 297 U. S. 650, 654. (Res. Kowalski Br. 23-4.)

Petitioners go so far as to assert that the real issues in this case depend upon the number of people who hear and see broadcasts and telecasts of baseball games, and the amount of money received from the broadcast and telecast rights. "Surely," say the Petitioners, "the amount of people and money involved affect this matter, and color the whole." (Pet. Br. 11.) Following this, Petitioners' brief is replete with statistics (from sources outside the record) as to Major League attendance, Major League clubs' receipts from sale of radio and television rights, comparisons of such receipts with attendance and with income from telegraph contracts, and similar material. None of this is alleged to affect or involve the Petitioners. The Petitioners' theory in advancing these statistics apparently is (a) that some interstate activities by some clubs bring all activities of all clubs under the Sherman Act, (b) that if some clubs receive an undefined proportion of their income from interstate activities, then all activities of those clubs and of all other clubs become inter-

state commerce subject to the Sherman Act, and (c) that if income from the sale of radio and television rights by Major League clubs is greater today than receipts from the sale of rights to telegraph companies at the time of the *Federal Club* case, that case is distinguished from the case at bar. The unsoundness of each of these theories is demonstrated in the respondents' brief in the *Kowalski* case. (Res. Kowalski Br. 54-6.)

As noted in that brief, the sale of radio and television rights does not convert the giving of local baseball games into an interstate activity or into trade or commerce, nor does the relative amount of income which a party derives from interstate and intrastate activities determine whether his activities as a whole shall be deemed interstate or intrastate for the purposes of the Sherman Act.

The advance of science (Pet. Br. 11) undoubtedly has an impact upon all commercial and non-commercial activities. However, it neither destroys nor amends the federal Constitution nor abolishes the distinction between intrastate and interstate activities which is inherent in our federal constitutional system. Whether a man traveling in the middle of Texas is engaged in intrastate or interstate travel does not depend upon whether he is traveling in an oxcart, an automobile or an airplane but instead upon whether his journey is in fact intrastate or interstate. Nor does the fact, that the value of all farm products produced in California in 1952 was many times the value of all farm products produced in California in 1850, mean that farming in California has now become interstate commerce.

Petitioners' assertion that in *Gardella v. Chandler*, (C. A. 2) 172 F. 2d 402, "The Second Circuit has ruled that Baseball is Interstate Commerce" (Pet. Br. 12) is typical of the erroneous assertions which characterize Petitioners' brief as a whole. In so far as the majority opinions

in the *Gardella* case held that it is an issue of fact whether the sale of radio and television rights converts the giving of professional baseball games into interstate commerce, the opinions are discussed in respondent's brief in the *Kowalski* case (pp. 56-61).

We add only a comment upon Petitioners' reliance upon Judge Hand's view that when descriptions of baseball games are broadcast or telecast, not by the clubs but by others who have purchased the rights, the situation is the same as would exist in a hypothetical case where "a state line ran between the diamond and the grandstand" and his assumption that such a fortuitous circumstance would convert the baseball game into interstate commerce. In making this statement Judge Hand overlooked the fact that this Court had determined that such a fortuitous circumstance is without legal significance. (Pet. Br. 12; 172 F. 2d 407.) *Hopkins v. United States*, 171 U. S. 578, 603; *Anderson v. United States*, 171 U. S. 604, 612-3.

2. None of the alleged restraints involved in the Mexican League Agreement are distinguishable from those involved in the Federal Club case.

The Mexican League Agreement provided that the clubs of the Mexican League and the clubs of the Minor Leagues belonging to the National Association would reciprocally refrain from employing a player while the player was still bound to another club by an unexpired player contract or option to renew such contract. These precise restraints were among those involved in the player regulations before this Court in the *Federal Club* case (*Supra*, pp. 17-8); and the instant case cannot be distinguished from the *Federal Club* case upon this ground. The grounds upon which Petitioners seek so to distinguish their claim are without substance.

First: The fact that a baseball club is located, or that a professional baseball exhibition is given, in a foreign country instead of in the United States, cannot change the game from a local activity into an interstate or international activity or from a sport into interstate or foreign commerce. That fortuitous circumstance is wholly unrelated to the character of the game. Indeed, both the record and the plaintiff's brief in the *Federal Club* case disclosed that baseball clubs in the Canadian cities of Toronto and Montreal were then members of the International League although, quite naturally, no one attached any importance to such a wholly irrelevant circumstance. (See *Federal Club* Brief p. 128 and Map opposite p. 126.)

Second: Petitioners contend that these precise restraints are lawful among professional clubs in the United States and they predicate their claimed damages upon the loss of an opportunity to sell player contracts which are saleable only because these restraints assure the purchaser of a right to the player's present services and an option upon his future services. (R. 13; LXVIII.) Petitioners' position is that these restraints are lawful among clubs in Organized Baseball in the United States, but fall within the condemnation of the Sherman Act if they are applied to precisely the same activities of clubs outside of Organized Baseball in a foreign country. In other words, Petitioners' contention is that they should be protected against other clubs inducing Petitioners' players to breach their contracts but that Petitioners should have a right under the Sherman Act to induce players employed by Mexican Clubs to breach their contracts.

No foreign commerce is involved. However, we are not familiar with any decision which holds that something which does not unreasonably restrain or monopolize inter-

state commerce, constitutes an unreasonable restraint or monopolization of precisely the same activities in foreign commerce.

3. "Farm Clubs" and the "Farm System" are wholly unrelated to Petitioners' claim but, were not that so, would have no legal significance in the case at bar.

Petitioners assert that they were faced with competition by the Farm System. (Pet. Br. 18, 19, 21, 22.) However, the only allegations in the Complaint, which in any way refer to "Farm Clubs" or the "Farm System," are that a Minor League club owned by a Major League club is a farm club; that Major League clubs own "farm clubs"; that the "Farm Clubs" and "independent Minor League clubs" both sell player contracts. (R. 5-6, pars. XXVII, XXVIII, XXIX.) Petitioners were allegedly damaged by reason of the loss of the services of the four Mexican players and of being "prevented from disposing of them for a considerable profit." (R. 13, par. LXVIII.) The Complaint does not allege a single fact, which, if proved, would establish, or permit an inference, that the "Farm Clubs" or "Farm System" had any causal relation to Petitioners' alleged damages or claim.

The Complaint does not allege that the Respondents have conspired together with others to establish Farm Clubs or Farm Systems. The Complaint alleges only that the agreements described in paragraph XXVI permit (i.e., do not prohibit) Major League clubs from owning Minor League clubs. (R. 5, par. XXVI, XXVII.) If an allegation that John Doe has not prevented others from engaging in something which constitutes a violation of the Sherman Act, charges John Doe with a violation of the Sherman Act, then everyone in the United States must be open to actions for treble damages and civil or criminal actions by the Government for violation of the Sherman Act.

However, even if the Complaint had alleged facts which, if proved, would establish or support an inference that Petitioners had been damaged or in any way affected by the Farm Clubs or the Farm System, the allegations would not be legally significant upon the question whether the District Court had jurisdiction over the subject matter of Petitioners' claim. The ownership of Minor League clubs by Major League clubs does not change the giving of professional baseball exhibitions from a local activity into an interstate activity or from a sport into trade or commerce; and such ownership does not violate the Sherman Act or any other law. (Res. Kowalski Br. 26-29.)

C. Were the Question Being Presented de novo In This Court, The Mexican League Agreement, by which Petitioners Were Allegedly Damaged, Would Not Fall Within the Scope of The Sherman Act Under The Applicable and Controlling Principles of Law.

The restraints allegedly contained in the Mexican League Agreement, like the restraints in the player regulations, are directed solely to the employment of players who participate in local professional baseball exhibitions and do not relate to, or affect, any line of interstate or foreign commerce. In this aspect, the instant case differs from the *Kowalski* case only in that the instant case involves the application of those restraints to an employing club instead of to a player. Consequently were the question being presented *de novo* in this Court, applicable principles of law would require a holding that the Mexican League Agreement does not fall within the scope of the Sherman Act for each of the three independently sufficient reasons set forth in respondents' brief in the *Kowalski* case. (Res. Kowalski Br. 31-44.)

II.

THE COMPLAINT DOES NOT STATE A CLAIM UNDER SECTION 4 OF THE CLAYTON ACT (15 U. S. C. 15) FOR THE FOLLOWING REASONS, ADDITIONAL TO THOSE STATED IN POINT I.

Under our Point I, we have pointed out that the Mexican League Agreement, by which alone Petitioners were allegedly damaged, does not, and is not alleged to, restrain interstate or international activities or trade or commerce within the meaning of the Sherman Act. Those aspects of the case alone would demonstrate a failure to state a private treble damage claim under Section 4 of the Clayton Act (15 U. S. C. 15) as well as a lack of jurisdiction over the subject matter.

Additionally, however, the Complaint pleads facts which establish that Petitioners are barred from recovery because they are merely seeking to enforce alleged rights in Organized Baseball, and that the subject matter of Petitioners' claim is specifically exempt from the antitrust laws by provisions of the Clayton and Norris-LaGuardia Acts; and the Complaint fails to plead any facts which, if proved, would show that the player regulations or the Mexican League Agreement have caused any injury to the public, or which would support a legal or logical inference that they have caused any damage to Petitioners' business or property.*

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* In addition, the Complaint fails to state a claim upon which relief can be granted to the Petitioner Corbett as the only allegation in the Complaint concerning his relation to the El Paso Club is that he "organized" it, (R. 11, par. LXI); and fails to state a claim upon which relief could be granted to Petitioners against the Respondents Cincinnati Club, Crosley and Giles, as none of the allegations of the Complaint with respect to those Respondents (R. 7, pars. XXXV-XXXIX) are in any way relevant to the Petitioners' claim. However, as neither of these questions were decided by the courts below, they are not presented to this Court.

A. Petitioners Are Barred From Recovery Because They Are Merely Seeking to Enforce Alleged Rights in Organized Baseball.

Analysis of the Complaint shows that Petitioner is claiming that enforcement of the Mexican League Agreement has deprived him of "rights in Organized Baseball." (R. 14, Prayer.) Such a claim, even if valid, is not a private statutory claim under Section 4 of the Clayton Act (15 U. S. C. 15).

Much of the Complaint condemns Organized Baseball and the player regulations. However, when Petitioners state the basis of their damages they claim that the Mexican League Agreement damaged them by depriving them "of their rights in Organized Baseball in the United States and its territories" and by preventing them from "disposing of them [the Mexican players' contracts] for a considerable profit." (R. 13-14, pars. LXVIII, LXIX, Prayer.)

Petitioner Corbett organized Petitioner El Paso Club to obtain a franchise in the Arizona-Texas League, a member of the National Association and a party to "Organized Baseball." In the Petitioners' Brief and argument in the District Court it was stressed that Petitioner Corbett had been a professional player and was an experienced scout and coach and that he bought the El Paso Club from the Boston American League Club. It thus appears that Petitioners were fully aware of the nature and organization of Organized Baseball long before their signing of th four Mexican League players.

The Complaint alleges that Minor League Clubs (that is clubs in leagues with membership in the National Association) were required to use a uniform or standard contract containing a right of reservation and a provision for assignment. (R. 6, par. XXIX.) The El Paso Club, as a

Minor League Club, was bound to use the uniform contract when it signed the four Mexican League players for the 1949 season. Obviously those contracts could not have been sold in any event unless they were assignable and contained an option to renew and right of reservation, for otherwise no purchaser would have any assurance that he could obtain the services of the players. If El Paso's uniform contracts were illegal and void, Petitioners would have nothing to sell. They were salable in any event only to other clubs in Organized Baseball, a circumstance recognized by the Petitioners when they pleaded that they were deprived of their rights in Organized Baseball with respect to their player contracts with the Mexican players.

The Complaint shows that the Petitioners approve of the reserve clause so long as it is applied among the clubs in Organized Baseball. Thus the Complaint recognizes the valid purpose of a reserve clause "to conserve the personnel" and "to protect team play among the members." (R. 6, par. XXXI.) The Complaint also recognizes that the reserve clause validly gives "a prior and exclusive right to the employing club, as against the other clubs in Organized Baseball, to enter into a contract securing its player services for the next season or seasons." (R. 6, par. XXXIII.) The Complaint asserts that such a construction of the reserve clause was judicially established in 1890 and was followed by Baseball Commissioner Landis (R. 6, 7, pars. XXXIV and LIV); but that Commissioner Chandler construed the reserve clause illegally in 1946 when he blacklisted players who breached their reserve clause contracts to play with the Mexican League (a league outside of Organized Baseball). (R. 8, 9, par. L.) Petitioners further assert that Respondent Chandler extended this illegal construction of the reserve clause through agreements with independent and unaffiliated clubs and

leagues. (R. 9, 10, par. LII.) The Mexican League Agreement is placed in that category and stigmatized as illegal.

In other words, Petitioners concede, and indeed assert, that the reserve clause is properly enforced among clubs in Organized Baseball (and hoped to utilize that principle to make a profit on their contracts with the Mexican players); but that the reserve clause of a league not a member of Organized Baseball cannot be recognized even by agreement between Organized Baseball and an independent league. However, such an agreement would make the independent Mexican League *pro tanto* an affiliate of Organized Baseball. The Mexican League Agreement is surely not to be condemned because it is narrower than the National Association Agreement and fails to make the Mexican League a full member of Organized Baseball.

All of this demonstrates that the Petitioners do not really object to player contracts containing a reserve clause or to the protection afforded those contracts by the organization "of Organized Baseball." Instead, they object that "Organized Baseball," by entering into and observing a reciprocal agreement with the Mexican League, has extended to the contracts of that League's clubs the same protection against clubs in "Organized Baseball," including Petitioners, which Petitioners claim against other clubs in "Organized Baseball," and which alone make Petitioners' player contracts saleable.

This is not a case where a party is coerced into operating as a part of an alleged conspiracy and seeks redress for injuries occasioned by his unwilling participation in the combination. Petitioners are willing members of Organized Baseball. Their complaint is that "Organized Baseball" has admitted to this allegedly illegal combination a league outside of the United States and that this infringes

Petitioners' rights in the allegedly illegal combination. Accordingly, even if the Respondents were, by their relation to Organized Baseball, engaged in an illegal conspiracy, the Petitioners are barred from recovery against them by the application of the elementary and long established principle that the law will not aid persons who are *in pari delicto*. *Harriman v. Northern Securities Co.*, 197 U. S. 244, 295-6; *Northwestern Oil Co. v. Socony-Vacuum Oil Co.* (C. C. A. 7), 138 F. (2d) 967, 971, cert. den. 321 U. S. 792; *Eastman Kodak Co. v. Blackmore* (C. C. A. 2), 277 Fed. 694, 700; *Bluefields Steamship Co. v. United Fruit Co.* (C. C. A. 3), 243 Fed. 1, 18, error dismissed 248 U. S. 595; *First National Pictures v. Robison* (C. C. A. 9), 72 F. (2d) 37, 40, cert. den. 293 U. S. 609.

In *Eastman Kodak Co. v. Blackmore, supra*, the court said:

> "It is fundamental that in the same conspiracy all participants are conspirators, whether the part they play be great or small. They cannot receive some of the fruits and then be held blameless for other acts which they may not have initiated but whose benefits they have received. * * *" (l. c. 700.)

Petitioners' citation of *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U. S. 211 (Pet. Br. 22) is not in point. There this Court held that in a private treble damage action under the anti-trust laws it was not a defense to allege that plaintiff was a party to a different conspiracy in violation of the anti-trust laws than the one with which defendants were charged. Here Petitioners are associated with the Respondents in the organization of professional baseball, participated in the very same conspiracy alleged in the Complaint, and their alleged damages are dependent upon the very same restraints which they charge are illegal.

Petitioners have received and accepted many benefits and advantages from Organized Baseball, yet they now label it an unlawful conspiracy and seek to mulct their alleged fellow conspirators in damages allegedly accruing from restrictions imposed by the same alleged conspiracy which alone makes their player contracts and "rights in Organized Baseball" of any value. Plainly no relief can be granted under 15 U. S. C. 15 on this contradictory and inequitable claim.

B. Neither the Player Regulations Nor the Mexican League Agreement Caused Any Injury to the Public.

To state a private claim for recovery of treble damages under the anti-trust laws, a complaint must allege facts which, if proved, would establish substantial detriment to the public. (See Res. Kowalski Br., pp. 62-3.)

It is not alleged in, and cannot be inferred from, the Complaint that either the player regulations or the Mexican League Agreement caused any damage to the public. It cannot be inferred from the Complaint that the alleged restraints against inducing breaches of contract have decreased the quantity or diminished the quality of professional baseball exhibitions, have caused any increase in the price charged to the public or have damaged the public in any other way.

C. The Complaint Fails to Allege Facts Which, If Proved, Would Support a Legal or Logical Inference That Petitioners Have Sustained Any Recoverable Damages.

To state a statutory claim for treble damages under Section 4 of the Clayton Act (15 U. S. C. 15) the Complaint must allege facts which if proved, would establish that Petitioners have been proximately damaged in their

business or property by the alleged violations of the Sherman Act.* The Complaint must allege facts "from which damages are logically and legally inferable and not merely conjecture." *Ebeling v. F. & K. Co.* (D. C. Wash.), 12 F. Supp. 489, 491.

"It is not enough to allege something forbidden by the Anti-Trust Laws (15 U. S. C. A. Secs. 1-7, 15) and to claim general damage resulting therefrom." *Gerli v. Silk Association* (S. D. N. Y.), 36 F. 2d 959, 960; *Asbestos Co. v. Johns-Manville Co.* (S. D. N. Y.), 30 F. Supp. 389, 391, affirmed 113 F. 2d 114. Where a violation of the Sherman Act is shown, "there is no legal or logical inference that someone has sustained recoverable damages in a civil action." *Twin Ports Oil Co. v. Pure Oil Co.*, 46 F. Supp. 149, 152.

There are only three respects in which the Complaint alleges Petitioners have been damaged.

First, the Complaint alleges that Petitioners lost the services of "four Mexican players" whom they had induced to breach contracts with Mexican clubs in order to sign with the Petitioner El Paso Club. It is difficult to see how failure to reap any gain from a common law tort could constitute legal damage. Moreover, there are no allegations that the Petitioners were compelled to hire players at higher salaries or were unable to hire other players of equal or greater ability to complete the Club roster, that the players hired by the Club were inferior in skill or drawing power to the four players whose services they

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* *Virtue v. Creamery Package Mfg. Co.*, 227 U. S. 8; *Glenn Coal Co. v. Dickinson Fuel Co.* (C. C. A. 4), 72 F. (2d) 885, 887; *Beegle v. Thomson* (C. C. A. 7), 138 F. (2d) 875, 881, cert. den. 322 U. S. 743; *Westmoreland Asbestos Co. v. Johns-Manville Co.* (S. D. N. Y.), 30 F. Supp. 389, 391, aff'd 113 F. (2d) 114; *Gerli v. Silk Ass'n* (S. D. N. Y.), 36 F. (2d) 959, 960; *Twin Ports Oil Co. v. Pure Oil Co.*, 46 F. Supp. 149, 152.

"lost," or that the Petitioners sustained any loss or suffered any diminution in gate receipts by reason of the alleged loss of said four players.

Second, the Complaint alleges that Petitioners were "deprived of the opportunity" to place other Mexican players under contract. Upon Petitioners' allegations they could have been deprived of such "opportunity" only because it would have been necessary for them tortiously to induce other Mexican players to breach contracts with Mexican clubs in order to sign with the El Paso Club.* Moreover, apart from these circumstances, the Complaint alleges no facts which, if proved, would establish that inability of the Petitioners to sign players, for whose services Mexican clubs held contracts or unexpired options, damaged the Petitioners in any way.

Third, the Complaint alleges that Petitioners were prevented from "disposing" of the Mexican players for a "considerable profit"; but it alleges no facts which, if proved, would establish that Petitioners could have "disposed of the Mexican players" at all, or if so, whether they could have done so at a profit or at a loss.

In short, the Complaint alleges no facts from which a "legal or logical inference" that Petitioners have sustained any damage could be drawn, and any such inference would be sheer guesswork and in the realm of speculation and conjecture.

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* In their brief Petitioners seemingly contend they were prevented from signing players of Mexican nationality. (Pet. Br. 20.) Nothing could be further from the truth. Petitioners have at all times been free to sign any player of any nationality, provided only that in so doing they did not induce such player to breach an existing contract with another club.

D. The Subject Matter of Petitioners' Alleged Claim is Specifically Exempted From the Anti-Trust Laws by Provisions of the Clayton and Norris-LaGuardia Acts.

Petitioners' alleged claim is based entirely upon the player regulations and the Mexican League Agreement (*Supra*, pp. 3-6), both of which relate wholly to the employment of persons to supply personal services or labor. Accordingly, for the reasons stated in the respondents' brief in the *Kowalski* case (pp. 64-6), the Petitioners' alleged claim is specifically exempted from the anti-trust laws by the provisions of the Clayton and Norris-LaGuardia Acts. It will be noted that in this case the alleged claim is a labor dispute between an association of employers and an employer-member of that association and falls within the italicized language of subsection (a), (2) of section 13 of the Norris-LaGuardia Act quoted in the Appendix to this brief. (29 U. S. C. 113(a), (2).)

III.

WERE THE COURT IN DOUBT AS TO THE SOUNDNESS OF THE FEDERAL CLUB DECISION AS AN ORIGINAL PROPOSITION, ANY CHANGE SHOULD BE LEFT TO CONGRESS.

For the last thirty years, ever since the decision of this Court in the *Federal Club* case, those engaged in producing professional baseball games have made investments, promulgated rules, and conducted their business in reliance thereon; and during that period the Congress has not exercised its unquestioned power under the commerce clause to regulate by appropriate legislation such of the activities of baseball as are interstate in character or substantially affect interstate commerce.

Under such circumstances, it is submitted that, for the reasons set forth in Point III of respondents' brief in the

Kowalski case (pp. 67-70), any change from the decision in the *Federal Club* case should now be left to Congress.

CONCLUSION.

For all of the foregoing reasons it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX.

Section 20 of the Clayton Act (29 U. S. C. 52; 38 Stat. 738)

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of

the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Sections 13(a) and (c) of the Norris-LaGuardia Act (29 U. S. C. 113(a), (c); 47 Stat. 73)

"13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) *between one or more employers or associations of employers and one or more employers or associations of employers;* or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

* * * * * *

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."